

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOHNATHAN LUTHER HILL,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Case No. C05-5621 RBL
CR95-174 RBL

ORDER

THIS MATTER comes on before the above-entitled Court upon several motions filed by the Petitioner/Defendant.

Having considered the entirety of the records and file herein, the Court rules as follows:

On March 23, 2006 this Court entered an Order dismissing Defendant's motion as a second or successive motion under 28 U.S.C. § 2255. [Dkt. #4, C05-5621 RBL]. On May 4, 2006 Defendant filed a Notice of Appeal of that Order and the Judgment thereon. He now seeks to withdraw that Notice of Appeal [Dkt. #9] and seeks to vacate the Court's prior judgment under Fed. R. Civ. P. 60(b)(4) [Dkt. #'s 7, 10]. The Court will construe the Defendant's Motions to Vacate as Motions for Reconsideration and will address them accordingly.

Because the Defendant's appeal has not yet been processed due to the lack of a certificate of appealability, the Court will **GRANT** Defendant's Motion to Withdraw Notice of Appeal [Dkt. #9].

1 The Defendant seeks to vacate the prior judgment arguing fraud and due process violations. As stated,
2 the motions are in essence motions for reconsideration. Defendant has raised no factual or legal argument
3 which convinces this Court that its prior Order was in error. Therefore, Defendant's Motion to Vacate
4 (Denial of Due Process) [Dkt. #7] and Motion to Vacate (Extrinsic Fraud) [Dkt. #10] are **DENIED**.

5 To the extent necessary, and for the reasons stated in this Order and prior Order [Dkt. #4], the Court
6 declines to issue a Certificate of Appealability because the Defendant has failed to make a "substantial showing
7 of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

8 **IT IS SO ORDERED.**

9 The Clerk shall send uncertified copies of this order to all counsel of record, and to any party appearing
10 pro se.

11 Dated this 6th day of July, 2006.

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14 RONALD B. LEIGHTON
UNITED STATES DISTRICT JUDGE